



**Sessions Case No. 744/2016**  
(CNR No. : MHPU01-012516-2016)

**State of Maharashtra**  
**Vs.**  
**Amit Dagade & Ors.**

**ORDER BELOW EXH. 13**

1] This is an application preferred by accused No.2 Amit Prakash Dagade, under Section 227 of Cr.P.C. for discharging him from the offences punishable under Sections 307, 504, 506(1) (2) read with Section 34 of Indian Penal Code, charge-sheeted by Hinjwadi Police Station vide Cr.No. 258/2016.

2] Heard learned advocate Mr.Dhage-Patil for applicant/accused No.2. He submits that, even after completion of investigation, prosecution could not bring on record the sufficient prima facie material to initiate the trial against present applicant/accused. Applicant/accused is a young person and was present along with main accused Prakash Dagade at the spot. But there was no active participation of applicant/accused in commission of crime. There is no prima facie material to show that applicant was carrying intention to assault or to commit murder of victim Dattoba. Only presence of the applicant at the spot is not sufficient to initiate trial against applicant for the above said serious offence. The learned Predecessor Court has already discharged two accused i.e. original accused No.3 Manoj Dagade and accused No.4 Milind Dagade due to the lack of prima facie evidence against them. As such, advocate for

applicant submits that, application may be allowed and he may be discharged from the above said offences.

3] Learned APP Mr.Javed Khan appeared for Respondent/ State and filed his say overleaf the application. He submits that, in the FIR itself, informant has attributed specific role to present applicant. On the date of incident, applicant and co-accused Prakash Dagade i.e. his father came at the spot in a four wheeler. Then applicant and co-accused Prakash abused informant and his brother. It is specifically alleged that, that time present applicant abused victim and threatened to kill him. Then co-accused Prakash Dagade pointed out one Revolver towards victim and then he fired at victim Dattoba. Thereby victim Dattoba sustained serious injury at his right hand and stomach. Therefore, applicant was very much involved in the incident of assault to victim. Applicant and co-accused i.e. his father was carrying common intention. Sufficient prima facie material is available against applicant also to initiate trial against applicant. The prima facie allegations against discharged accused i.e. accused No.3 and 4 are different than the present accused. Therefore, parity will not be applicable. Offence is serious in nature. The grounds alleged in the present application are grounds of defence, which can be raised during the course of trial. Therefore, he prays for rejection of the application.

4] Perused the record.

5] Prima facie, the dispute was about a land, owned by victim Dattaoba Vede, at Survey No. 33/4/5/6 at Kokate Vasti, Bavdhan. On the date of incident, the team of Pune Municipal Corporation (PMC), Pune went at the spot to remove the encroachments. It is specifically alleged that, on that day, initially there was hot exchange of words between Milind Dagade and Anil Dagade and son and nephew of informant Pandurang. Informant Pandurang released the quarrel between them and returned to the place, where the procedure of removal of encroachment was going on. That time, applicant and his father i.e. Prakash Dagade came at the spot. There was hot exchange of words between victim Dattoba and father of applicant and it is specifically alleged that, that time applicant abused victim Dattoba and threatened him to kill. Then father of applicant/accused, Prakash fired at victim Dattoba. Informant has stated these facts in FIR itself. Therefore, prima facie the presence of applicant at the spot is clearly marked. The role is also specifically narrated. Victim Dattoba has also marked presence of applicant at the spot on the date of incident.

6] Applicant was not only present, but it is alleged that, he abused victim and threatened him. Now, it is the question of trial, whether applicant was carrying common intention with his father to assault victim. Though act of firing has been committed by accused Prakash Dagade, applicant was actively present at the spot. Prima facie in a sense, question is, whether applicant facilitated to co-accused Prakash by using abusive language, threatening to victim. So, it is the question of trial, whether applicant was carrying

common intention with co-accused Prakash Dagade. As such, material is available to initiate trial against applicant. The allegations against accused No.3 and 4, who have been discharged are different than the present applicant. As such, considering the active presence of applicant at the spot, I am of the view that, trial against applicant for the aforesaid offences is necessary. Though, at this stage, Court cannot appreciate the evidence in the matter, the Court certainly can see the prima facie material for initiating the trial against applicant. That the offence is serious in nature and the grounds raised in this application could be the grounds for defence during trial. But the trial is seen to be necessary. Hence, the application cannot be entertained.

**ORDER**

1] The application (Exh.13) is rejected.

Pune.  
Date : 25/04/2022.

[ Smt. A. V. Rotte ]  
Additional Sessions Judge, Pune

**C E R T I F I C A T E**

I affirm that the contents of this P. D. F. file Order are same word for word as per original Order.

Name of the Court       :-       Smt. A. V. Rotte,  
District Judge- 4 and  
Additional Sessions Judge, Pune

Name of the Steno :- Shri. D. L. Gudde  
Stenographer (Grade-I)

Date of Order :- 25/04/2022

Order signed by  
presiding officer :- 26/04/2022

Order uploaded on :- 26/04/2022.